

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

KAFFIEA HARLAN,)
v. Plaintiff,)
CAROLYN W. COLVIN,) Case No. CIV-13-477-D
Acting Commissioner of the Social)
Security Administration,)
Defendant.)

ORDER

Before the Court is the Motion for Attorney Fees Under 42 U.S.C. § 406(b) [Doc. No. 26], filed by Plaintiff’s attorney, Miles L. Mitzner. The Acting Commissioner has filed a timely response to the Motion, urging the Court to undertake an independent review and to determine the reasonableness of the fee request under controlling law. While recognizing a lack of financial stake in the Court’s approval of attorney fees awarded under § 406(b), the Acting Commissioner contends Mr. Mitzner’s request for a fee in the amount of \$17,429.22 is unreasonable because it “would equate to an hourly rate of \$632.64.” *See* Def.’s Resp. Br. [Doc. No. 27], p.4. In reply, Mr. Mitzner both disagrees with this argument, and asserts that he has spent an additional 6.1 hours on the § 406(b) fee issue, for a total amount of legal work on the case of 33.65 hours and a putative hourly rate of \$517.95.¹

¹ Notably, however, it may be within the Court’s discretion to deny an award of fees for time devoted to fee litigation. *See Sanders v. Astrue*, 287 F. App’x 721, 725 (10th Cir. 2008) (affirming denial of EAJA award for litigating issue that was intended to benefit claimant’s attorneys).

Upon consideration of the Motion in light of *Gisbrecht v. Barnhart*, 535 U.S. 789 (2002), and *Wrenn v. Astrue*, 525 F.3d 931 (10th Cir. 2008), the Court finds that Plaintiff's attorney may recover a reasonable fee for the representation of Plaintiff in this case up to the statutory limit of 25% of past-due benefits, provided the attorney refunds the amount of \$4,785.00 previously awarded under the Equal Access to Justice Act (EAJA). *See Order Awarding Attorney Fees* [Doc. No. 23]. The supporting documents with the Motion, as well as the case record, reveal at least 27.5 hours of legal work devoted to this case, which resulted in a fully favorable decision. After remand, Plaintiff was determined to be entitled to benefits and was awarded a past-due amount of \$69,716.88. The Motion has been timely filed within the time period previously determined by the Court to be reasonable. *See Order Granting Mot. Relief Pursuant to F.R.C.P. 60(B)(6)* [Doc. No. 25].

Under the circumstances presented, the Court finds that the requested amount of \$17,429.22 represents a reasonable fee for the work done in this case in view of the nature of the representation, the contingent fee agreement with counsel, and the results achieved, and that this amount does not exceed 25% of Plaintiff's award of past-due benefits obtained by reason of the Judgment entered July 14, 2014. The Court therefore finds that the Motion of Plaintiff's attorneys should be granted.

IT IS THEREFORE ORDERED that the Motion for Attorney Fees Under 42 U.S.C. § 406(b) [Doc. No. 26] is GRANTED. The Court approves an award of attorney fees under 42 U.S.C. § 406(b) to the signatory to Plaintiff's fee agreement, Miles L. Mitzner, in the

amount of \$17,429.22. Plaintiff's attorney shall promptly refund to Plaintiff Kaffiea Harlan the amount of EAJA fees previously awarded of \$4,785.00.

IT IS SO ORDERED on this 18th day of December,



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE